

# Kentucky Real Estate NEWS

A Publication of the Kentucky Real Estate Commission

## "TIME IS OF THE ESSENCE"

*How these five little words can make or break a deal*

By: *Lee B. Harris*  
*General Counsel*

"Time is of the essence." While this is a seemingly innocent and simple phrase, it holds some key legal significance for real estate purchase contracts.

Essentially, if "time is of the essence" as to a particular paragraph or an entire contract, then the dates in that contract are set in stone. If the closing is to occur by May 31, for example, and time is of the essence for that closing date, then the closing must occur by that date or the contract is expired. On the other hand, if closing is to occur by May 31 and time is not of the essence for that closing date, then the courts have said that both parties have a reasonable amount of time in which to close after the established closing date has passed.

Through pre-licensing, continuing education and every-day experiences, most licensees have a general knowledge of the meaning and effect of using the phrase "time is of the essence" in a legal contract. However, use of this legal term should probably be analyzed in every situation to determine whether it

would be beneficial for the buyer and/or the seller in a particular deal because the use or non-use of this term could drastically change the results of a transaction.

In some areas of the state, it is common practice for time to be of the essence for the entire purchase contract. In other areas, pre-printed contracts will contain the phrase only for certain paragraphs, such as closing, inspections and the like.



Whenever a buyer or seller gets into a situation in which this phrase would have clarified matters, licensees tend to want to

use the phrase for all contracts. But be advised: "time is of the essence" can be a deal-killer as well as a deal-saver. If the mortgage company is really busy one month and they cannot get the paperwork done by the closing date in the contract, then the deal could be off if the bank's delay pushes the closing back too far. If the seller has received a back-up offer in the meantime, the buyer is out of luck. Likewise, this phrase can be a negative for the seller. If the buyer is pushing towards closing, but it cannot be done until after the

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## **Comments from the Chair**

by: **Betty J. Kaiser,**  
Chair



**R**ecently, I have taken the opportunity to use this column as a vehicle to inform licensees about the issues that have come before the Commission and how we have handled those issues.

Since the publication of our last newsletter, there have been several key developments at the Commission and in the real estate industry. As outlined more specifically on page 7, there will be a new property conveyance law in effect as of July 15, 2003. This law states that licensees do not have to disclose any fact or circumstance about a property that is not expressly required to be disclosed under state or federal law.

The Commission has ruled on several questions from licensees and instructors. First of all, the Commission looked at earnest money deposit releases. We determined that a principal broker may not designate himself or herself as the recipient of the earnest money deposit release unless he or she is a party to the purchase contract. Since the principal broker is generally not a party to the contract, and is generally not the contractually-

designated recipient of the earnest money deposit, the earnest money deposit will be returned to either the buyer or the seller in most cases.

Also, the Commission looked at the issue of properties being escheated to the state. Under KRS 381.300, if a non-resident alien purchases real property in this state and then does not become a citizen within eight (8) years, the real property can be escheated, or given over to, the state. Licensees expressed concern that purchasers may not know of this statute. Therefore, we have developed a disclosure form that you are all free to use if this situation should arise with any of your clients or customers. You can find the "Alien Escheat Statute Disclosure Form" on our website at [www.krec.net](http://www.krec.net) under the Legal Information Section.

If you ever have any questions or concerns about issues that arise in your day-to-day practice, please feel free to submit those issues for our consideration. Please contact the legal department for details on how to submit a request so that it may be placed on the Commission meeting agenda. There is a one week deadline prior to each meeting.

## From the Director's Desk

by: **Norman E. Brown,**  
Executive Director



I am so happy to have this space to convey to you all of the exciting things going on at the Commission right now. We are constantly working to help and improve the real estate industry.

This year we have begun giving first-time homebuyer seminars around the state. We have teamed up with the Kentucky Housing Corporation ("KHC") to provide information to consumers about purchasing a home and completing financing. A representative from Fannie Mae has also volunteered to speak about their financing options. The seminars will generally run about two hours, and we cover numerous topics that will hopefully turn the participants into knowledgeable consumers. Of course, knowledgeable consumers ask the right questions and seek the right advice, hopefully making your jobs that much easier and smoother.

Our first seminar was in Frankfort and was attended by approximately 15 people. We have also recently held a seminar in the Lexington area. That seminar drew 20 potential buyers. We plan to do these seminars in several other markets in the coming months, and we encourage licensees to attend the seminars and bring potential buyers as well.

As I have mentioned here before, we are currently working on a rewrite of the old law textbook. The Commission just voted to give a copy of this book to all broker licensees, not just to principal brokers. We expect those to be mailed out in early 2004.

I also want to keep you up-to-date on the progress of our on-line renewal project. We are still working closely with the University of Louisville and our own computer programmer to implement on-line renewal.

They have developed a program that will communicate with our licensee database. The Commission did an on-line renewal test this past renewal and a few licensees actually renewed on-line. We plan on doing a more in-depth testing of the system during the 2004/2005 renewal period and having it fully operational by 2005/2006 renewal.

Finally, we are again going to have a booth at the Kentucky State Fair. We are located in the South Wing, along with many other state agencies. We are going to be conducting a drawing to give away a dollhouse to one lucky Fair-goer. Also, we are going to be promoting the industry by encouraging consumers to use a real estate professional and by encouraging individuals to consider real estate as a career.

## *It Takes Two to Escrow a License*

When a licensee wishes to place his/her license in escrow (inactive status), two steps must be taken -- one by the principal broker and the other by the licensee:

1. The **principal broker** must sign the release statement on the back of the license and return it to the Commission immediately. The principal broker must also send a written notice to the licensee advising that this action has been taken.
2. The **licensee** (not the principal broker) must send the Commission a signed, written request to place the license in escrow. It must include the licensee's home address and a \$10 check payable to KREC. The letter must be received within 30 days of the date the license was released by the principal broker. This is available on Fax-on-Demand, Doc. #203.

A principal broker may not place an individual's license in escrow, nor should the broker take on the liability of collecting the escrow request and fees to send in on behalf of the licensee. It is the licensee's responsibility to notify the Commission that the license is to be placed in escrow.

While in escrow, the licensee may not engage in any real estate activities. However, escrowed licensees are still required to pay the annual renewal fee before March 31 of each year. Renewal forms are mailed out to all escrow licensees in late February at the last residence address on file with the Commission.

Most importantly, if you move while your license is in escrow, it is imperative that you notify the Commission **in writing** of your new address. Over 100 escrow renewals were returned this year because licensees failed to notify the Commission of the change. There is no charge for a residence address change.



## Commissioner's Corner



Betty Kaiser



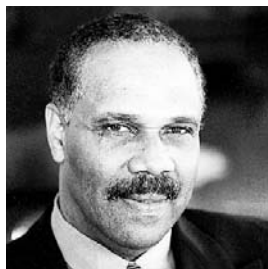
Arvel J. McMahan



Sue Teegarden



Bob Roberts



Ron Smith

# BACK-UP OFFERS

By: *Lee B. Harris, General Counsel*

Under Kentucky license law, a licensee must submit all written offers as soon as possible after receipt of the offer. The precise language of the regulation can be found at 201 KAR 11:045.

There is some confusion about this regulation in the real estate industry. The Commission's legal staff has received numerous phone calls and complaints about licensees refusing to accept or present any written offers once there is an accepted contract on a property.

As anyone in the industry knows, accepted contracts do not always lead to closings. Most contracts have numerous contingencies, such as financing, whole-house inspections, termite inspections, etc. Any one of those con-

tingencies could lead to a break-down in the contract. Moreover, a buyer could simply get cold feet and decide to walk away from the purchase contract for no reason. Therefore, it may be advisable to have back-up offers on the property.

Either way, the law says that a licensee must submit all written offers to purchase. Therefore, if a buyer or a buyer's agent comes to you with a written offer after there has already been an accepted contract, you must present that offer to the seller for consideration. The seller can throw the offer in the garbage and allow it to expire without action, if he or she so desires. Or, the seller could accept the offer as a back-up offer in case the original contract falls apart for any reason.

## Balancing the State Budget Impacted the Commission's Accounts

By: *Shelly Cameron  
Director of Administration*

The 2003 session of the General Assembly greatly affected the Kentucky Real Estate Commission. In an effort to balance the state budget, the General Assembly reviewed the accounts of state agencies, specifically, unbudgeted carryforward monies. How did this impact the Commission? Well, the state has taken \$196,200.00 out of our operating account and \$657,400.00 out of our Education Research and Recovery Fund account to help balance the state budget. Both of these accounts are funded by you, the licensee.

When a licensee renews his license, a sales associate pays \$50.00 and a broker pays \$55.00. The Commission then takes \$25.00 and puts that into the Recovery Fund account. The remaining \$25.00 (sales associate) and \$30.00 (broker) is placed into our operating account. The Operating account is used for the everyday operating expenses of the Commission. The Recovery Fund account is used for educating real estate licensees. Under KRS 324.410, the Recovery Fund shall maintain a minimum level of \$400,000.00.

On a positive note, the Governor's office originally gave the General Assembly figures to be taken from each agency. In most cases, the General Assembly took larger amounts of money from each agency than the original amounts proposed. The Commission's amount did stay at the original \$852,600.00 level.

The Commission plans to monitor this activity and work with other state agencies to prevent this from happening in the future. We believe that by contacting your legislators and senators, real estate licensees could have a big impact on any future proposed fund transfers.

# UNLICENSED BROKERAGE

By: *Lee B. Harris, General Counsel*

In the past few months, the Commission has seen an influx of unlicensed brokerage cases. Currently, we have 7 such cases under investigation. This represents a very large percentage of our caseload.

These cases take many forms. For example, the cases run the gamut from out-of-state brokers representing buyers or sellers in our state without proper licensure to unlicensed individuals engaging in property management to licensees working outside the confines of their broker's supervision.

Under KRS 324.990, unlicensed real estate brokerage is a crime in this state. The penalties for violating this section can be steep and severe, including fines and possible jail time. In addition, violators can be ordered to disgorge any fees that were obtained as a result of unlicensed brokerage activities.

KRS 324.010(1) defines "real estate brokerage" as "a single, multiple or continuing act of...selling or offering for sale, buying or offering to buy, negotiating the purchase, sale, or exchange of real estate, engaging in property management, leasing or offering for lease, renting or offering for rent, or referring or offering to refer for the purpose of securing prospects, any real

estate or the improvements thereon for others for a fee, compensation or other valuable consideration."

If anyone is engaged in these activities for someone else for a fee, then he or she is engaged in real estate brokerage and must have the proper licensure. This is true for several reasons. First, and perhaps most importantly, only licensees are subject to the jurisdiction of the Commission. Consumers who are dealing with unlicensed individuals are essentially without a safety net in the event that something goes wrong in the transaction.

Second, unlicensed individuals may be unaware of Kentucky laws. How can someone protect a consumer if he or she does not know the laws governing real estate activities? Generally, unlicensed individuals will not have the required education or training necessary to protect and represent a consumer in this state. Finally, it is unlikely that unlicensed

individuals know the Kentucky markets as well as Kentucky licensees.

If you become aware of unlicensed brokerage activity, please report it to the Commission. You are the eyes and the ears of the industry. As such, you can greatly assist us in policing unlicensed brokerage and in protecting our Kentucky consumers. In addition, and most importantly for you, it is illegal for you, as a licensee, to pay commissions to or split fees with someone who is engaged in unlicensed brokerage activity.



## Active Licensees Who Have Not Renewed For 2003/2004

The Commission has not received renewal payments for the following active licensees. If your name appears on this list and you want to renew your license, please contact the Commission's Licensing Department. These licensees were cancelled on April 1, 2003 and are operating illegally if actively practicing. Please note that this list is as of June 15, 2003.

Rachel Atherton  
Ellen Bass  
Samuel Carpenter  
David Cates  
Carlos Culver  
Carl Frederick  
Thomas Henry  
Evelyn Hickman  
John Holder  
William Hopkins  
W. Willis Hoy

David Jaquith  
Michael Kinman  
Thomas Kramer  
David Lawyer  
Richard Leake  
James Lindsey  
Samuel Mays  
Gregory Montgomery  
Joseph Noland  
Charles Padgett  
Larry Pierson

Curtis Pile  
James Roe  
Ann Simpson  
Warren Stull  
John Sullivan  
Douglas Thurman  
Douglas Travis  
Peggy Faye Vinson  
Marvin Walls  
Jacquelyn Watts  
Robert Wilson



## Kentucky Real Estate Commission Sponsors Speaker at Kentucky Association of Realtors® Annual Convention

The Kentucky Real Estate Commission presents Brian Tracy, one of America's leading management authorities, on Wednesday, September 17, 2003. The Commission invites you to attend this free session designed to increase your level of achievement and personal effectiveness.

The Kentucky Real Estate Commission is hosting this special presentation from 8:30 to 9:30 a.m. during the opening session of the Kentucky Association of Realtors® (KAR) annual convention at the Northern Kentucky Convention Center in Covington.

Brian Tracy is a dynamic speaker with the ability to inform and inspire his audiences to reach peak performance. His background in sales and marketing, investments, real estate development and syndication, and management consulting led to his effectiveness as the chief operator of a development company with \$265 million in assets and \$75 million in annual sales. He is chairman of Brian Tracy International, a human resource company with offices across the U.S. and in 31 countries worldwide. As the best-selling author of Maximum Achievement and Advanced Selling Strategies, he brings concrete, practical techniques

for success to his audiences.

All licensees are invited to attend this seminar. You do not have to be a member of the Kentucky Association of Realtors® in order to attend. Licensees are invited to participate in KAR's September 15th through 18th convention that offers continuing education sessions with top-rated national and state speakers, a trade show featuring products and services for real estate professionals, and networking opportunities. For details on registration, please go to <http://www.kar.com/> or call KAR toll-free at 1-800-264-2185.

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## CONTRACTS RESTRICTED TO REAL ESTATE LICENSEES AND REAL ESTATE-RELATED PROFESSIONALS

By: *Shelly Cameron*  
*Director of Administration*

At the February 27, 2003 Commission meeting, a motion was made to restrict access to the "approved" Commission contracts to real estate licensees and real estate-related professionals. The motion passed unanimously.

Since February, the Commission has taken steps to restrict all "approved" contracts. Licensees can no longer access contracts off of our fax-on-demand system since that system can be easily used by the public. The contracts are now available to licensees in a password-protected format on our website. You may also receive a restricted contract through the mail or by walking into the Commission's office after you have verified that you are a licensee. Below are the instructions for obtaining the contracts on our website. We ask that you do not share the user ID or password with anyone who is not licensed to practice real estate.

Log onto [www.krec.net](http://www.krec.net):

Click on **Licensee Restricted Contracts and Forms** under the **General Information Section**.

A box will come up that looks like the one below. You must type in "get" in the User Name box and "forms" in the Password box and click ok.

Enter Network Password	
Please type your user name and password	
User Name	<input type="text" value="get"/>
Password	<input type="text" value="forms"/>
<input type="button" value="OK"/> <input type="button" value="Cancel"/>	

This must also be typed in all lower case letters or you will be denied access.

The Commission highly encourages licensees to use our "approved" contracts or Board "approved" contracts. The Commission can review your current contract to ensure compliance with Kentucky licensing laws.

If you have any problems accessing our contracts, please call Shelly Cameron at the Commission.



# "TIME IS OF THE ESSENCE"

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established date in the contract, the buyer can walk. What if the seller has already moved out or has another property under contract?

My advice is this: use "time is of the essence" sparingly but wisely. Discuss the issue and its ramifications with your client. Then, if something unfortunate happens during the transaction, your client will have been a part of the decision to use or not to use this phrase. If the client is not consulted and something unexpected happens, the client may look to you to explain why the deal is going sour.

If you and your client decide, upon consultation, not to make time of the essence, then explain to that client that the dates in the contract are not hard-and-fast dates. It is easy to do this up-front, but it is difficult to tell a seller two days after the set closing date that the contract is still valid.

This is especially true if they have back-up offers they would like to take.

This is a final and important point: If time is not of the essence and the established closing date passes, the contract is not expired and it is not null and void. Oftentimes, I receive calls from agents who have instructed their clients that they may proceed on with their back-up contracts once the closing date has passed. This is not so. If the seller wants to move on from the original contract, he or she needs a release from the first buyer.

Likewise, if there are other terms in the contract that specify that certain dates will be met and those dates are not of the essence, then they are also not set in stone. For instance, if a buyer promises to bring a pre-approval letter within five days and he does not, the contract is not null

and void. The buyer still has a reasonable amount of time to fulfill that portion of the contract. Please do not advise the seller that the contract is void and that he can move on to the next buyer! It is always inadvisable to instruct a seller that a contract is void, as contracts are bilateral and generally cannot be declared void by one party. It takes two to enter the contract, and it takes two to declare the contract void.

Now, the final and ultimate question: What constitutes a "reasonable time"? This depends upon the circumstances of each case. While the parties and the licensees may be anxious to close and may feel that weeks or even months is not a reasonable amount of time to wait, keep in mind that the sale of real estate is a long-term proposition. The property will likely be the same in weeks or months as it is now. It is not like selling fruit, which, if not consumed, would be rotten in a week's or a month's time.

## PROPERTY CONVEYANCE BILL

By: *Lee B. Harris*  
*General Counsel*

The General Assembly just passed a new property conveyance bill at its 2003 session. This bill, which was passed as House Bill 324 and will become a new section of KRS Chapter 382, states that real estate licensees do not have to disclose anything about a property that is not specifically required to be disclosed by state or federal law. This new law will take effect on July 15, 2003. Until then, the law is still the same.

The new law could have far-reaching effects for the real estate industry. This law should now make it clear that a licensee does not have to disclose any stigmas associated with a property, such as a murder,

a suicide or a violent crime that has occurred at the property. In addition, this law should eliminate a licensee's need to disclose the existence of sex-offenders in a particular neighborhood, as Megan's Law does not require such disclosure by the real estate licensees involved in the transaction.

However, keep in mind that licensees are required to answer all direct questions in an honest manner. This includes questions regarding stigmas and sex-offenders.

Please feel free to contact our office if you have specific questions about the new law and its effect on your practice. We will have a link to the new law on our website for your review.

## License Laws Apply to ALL Transactions

*For Example:*

- ALL licensees must accept earnest money deposits from offerors and must place those deposits into their escrow accounts;
- ALL advertisements for listed properties must include the company name or the principal broker's name;
- ALL information supplied to the Multiple Listing Service must be verified as accurate, to the best of the licensee's abilities; and
- ALL licensees must submit all offers without delay.

# UNDISCLOSED DUAL AGENCY IN ALASKA COULD AFFECT KENTUCKY LICENSEES

By: Lee B. Harris  
General Counsel

In 2002, the Alaska Superior Court handed down a very important decision regarding undisclosed dual agency. You may wonder why the views of an Alaska court on undisclosed dual agency would have any bearing on your practice. The answer is quite simple: while Kentucky courts would not be **required** to follow the precedent of another state's courts on such issues, those findings could provide persuasive authority to Kentucky courts on how to handle similar issues in this state.

In the case of Columbus v. Mehner, the Alaska Court held that the sales associate, Bonnie Mehner (hereinafter "Mehner"), had engaged in undisclosed dual agency and had violated her fiduciary duties to her client. The facts which led to this decision are similar to situations you will likely run into frequently in your day-to-day business dealings.

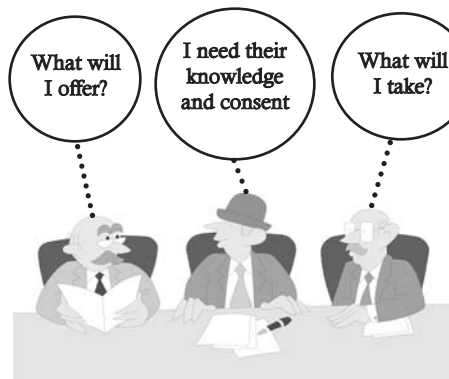
The prospective buyer, Joseph Columbus ("Columbus"), wanted to see one of Mehner's listings, but the buyer's agent with whom he was working was out of town at the time. So, Columbus called Mehner, and she met him at the property. He gave her the card of his buyer's agent and indicated that he was working with this agent. After noting that she usually does not show properties to other people's clients, Mehner agreed to show Columbus this listing. He was not interested in the property. Mehner then offered to show him some of her other listings.

The next day, Columbus viewed the same property again, as well as several other properties. He found one he liked and wanted to make an offer on it. Because his own buyer's agent was still out of town, Columbus asked another agent in the buyer's agent's company to draft up an offer and present it to Mehner. Mehner indicated that the offer "would not fly" and also expressed that she was angry that the buyer was still working with this other agent's firm instead of through her. She indicated that Columbus became her client when he called her the second time.

Mehner contacted Columbus, berated him and told him that she expected to receive both sides of the commission on this sale. She told Columbus the offer price would have to be close to full price in order for Columbus to

secure the property. She also told Columbus that the seller did not have to negotiate on the price because his employer would make up any difference between the sales price and the listing price. This statement was false.

Believing that he had to work through Mehner to purchase this property, Columbus had Mehner draft up a full-price offer. For the first time, Mehner brought up the issue of dual agency. She presented Columbus with an agency disclosure form, and he signed it. Columbus then made a full-price offer on the property, and the seller accepted Columbus' offer.



Columbus and his buyer's agent eventually filed suit against Mehner, alleging that she had breached her fiduciary duties to Columbus and had intentionally interfered with the contractual relationship between Columbus and his agent. The court ruled in favor of Columbus and the buyer's agent and awarded damages to both parties. The buyer received the difference between the price he actually paid for the property and the price he would have paid had

Mehner acted in accordance with the law. The buyer's agent received half of the commission.

The court held that Mehner had violated Alaska's dual agency disclosure laws by waiting until Columbus had already seen several of her listings and made an offer on one to even broach the subject of dual agency. In addition, the court found that Mehner had violated her fiduciary duty to the buyer by failing to disclose her dual agency status, since, as a dual agent, her role was limited.

However, that is far from the end of the story. The buyer was also eligible to receive punitive damages because the court found that Mehner's actions were so egregious as to merit such additional damages. A hearing was set to determine the amount of punitive damages, but the parties settled the matter for \$200,000.00 prior to the court's ruling on the issue.

There are so many issues in this case and so many lessons to be learned from it. First and foremost, it is important to be cognizant of agency and disclosure laws at all times. 201 KAR 11:400 governs when and how agency disclosure must be performed. Perhaps the most important aspect of this law is that dual agency requires the knowl-

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## UNDISCLOSED DUAL AGENCY

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edge and consent of both parties. You cannot ever assume that you are a dual agent until both the buyer and the seller have consented, with knowledge, to that agency relationship. In addition, undisclosed dual agency is unlawful and can lead to disastrous results, as Mehner found out.

The second lesson is related to the first. When you list a property for a seller, your primary duty is to sell that home. If a buyer comes along and the buyer and seller both consent to dual agency, then it is perfectly legal for you to represent that buyer as well. However, it is not your right to be a dual agent or to obtain both sides of the commission. A buyer has the right to be represented by whomever he or she chooses at any time in the transaction. It could be a serious breach of your fiduciary duty to put your potential commission above the interests of your seller-client.

The best way to avoid potential conflicts or breaches of contractual relationships between a buyer and another agent is to handle the situation properly from the outset. Ask the buyer if he or she has an agent, even if you are afraid what the answer might be. If the buyer is working with another agent, allow that buyer and his agent full access to the property as you would your own buyer-client. Do not attempt to "take" that buyer away from his agent. Do not ever refuse an offer or tell a buyer he or she has to work with you. Consider how much liability would be created if you were to steer the buyer away from using his or her own agent and then a problem arose in the transaction.

Finally, it is always important to consider your relationship to the industry and to the other professionals in your industry. The old adage is true: what goes around comes around. If you try to encourage buyers to work with you over their chosen real estate agent, what is to stop the other licensees in your profession from trying to coax your client away from you? My advice is to follow the Golden Rule, and everyone will benefit.

### The Conflict Between KRS 324.160(4)(p) and the Code of Ethics

By: *Shelly Cameron*

*Director of Administration*

Licensees who are also Realtors® sometimes find themselves in a situation in which the National Association of Realtors® Code of Ethics says one thing and the Kentucky licensing law says another. When you are in that situation, please remember that the Kentucky licensing law always trump the National Association of Realtors® Code of Ethics. Licensees must always follow the licensing laws or they may find themselves in a hearing before the Commission.

Specifically, the Commission discussed the conflict between KRS 324.160 (4)(p) and the Code of Ethics. KRS 324.160 (4)(p) states:

**The commission shall impose sanctions set out in subsection (1) of this section against a licensee for:**  
**(p) Negotiating or attempting to negotiate the sale, exchange, lease, or rental of real property, or attempting to obtain a brokerage agreement with a consumer knowing that the consumer had a written**

**outstanding contract granting exclusive agency with another real estate broker.**

The Commission interprets this statute to mean that a licensee cannot postdate a contract, contact a consumer with an existing listing agreement, do a comparative market analysis on the property, etc. The only thing a licensee can do under this statute is discuss his/her services and/or fees if contacted by a consumer. The Commission advises licensees to have the consumer contact them after their existing contract has expired.

However, the Code of Ethics states under Standard of Practice #16-4 that "REALTORS® shall not solicit a listing which is currently listed exclusively with another broker. However, if the listing broker, when asked by the REALTOR®, refuses to disclose the expiration date and nature of such listing; i.e., an exclusive right to sell, an exclusive agency, open listing, or other form of contractual agreement between the listing broker and the client, the

REALTOR® may contact the owner to secure such information and may discuss the terms upon which the REALTOR® might take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing." (Amended 1/94)

The last sentence in this article conflicts with Kentucky Revised Statute 324.160 (4)(p); therefore, licensees cannot contact the owners of property in order to take a listing to become effective upon the expiration of the existing listing.

This is just one example of how the Code of Ethics may conflict with Kentucky law. As licensees, please become familiar with all of the license laws. They are available to you through our website and each active agent should have recently received a manual at his/her home address. If you ever run into a problem and you are not sure what to do, please call the Commission. General Counsel Lee Harris will be happy to point you to the appropriate statute or regulation.



# Disciplinary Actions



## Joseph "Ed" Royalty

(Shepherdsville) Case No. 02-0103

**Violation:** Mr. Royalty stipulated to a violation of 201 KAR 11:121, Section 1(4) for purchasing one of his own listings for less than the listing price.

**Disposition:** Mr. Royalty agreed to have his license placed on probation for a period of twelve (12) months. This means that if there are any proven like-kind violations of license law during the probation period, the subsequent penalties will be more severe. Mr. Royalty also agreed to attend nine (9) hours of continuing education in agency law within twelve (12) months of the Commission's Final Order. Mr. Royalty also agreed to pay restitution to the Complainants in the amount of \$10,000.00 within thirty (30) days of the Commission's Final Order.

## Turner A. Summers (Sadieville)

Case No. 01-0017

**Violation:** Mr. Summers was found guilty of violating KRS 324.160 (4)(u) for violating KRS 324.111(1), (4) and (6) for failing to deposit an earnest money deposit into his escrow account.

**Disposition:** Mr. Summers' license was suspended for six (6) months and it shall not be reinstated until Mr. Summers submits proof that he has placed \$5,000.00 in his escrow account to cover the amount of the contract deposit that he received from the complainant, Mr. Jones. Mr. Summers must also successfully complete ten (10) credit hours in real estate courses focusing on escrow accounts and the requirements for the deposit, withdrawal and release of contract deposits.

## Connie K. Woodward

(Lexington) Case No. 01-0081

**Violation:** Ms. Woodward stipulated to a violation of KRS 324.160(4)(v) for improper conduct for drawing up a second version of a contract that had been misplaced, at the request of her seller client, and signing the names of the buyers to that contract without the knowledge that those buyers had not authorized such conduct.

**Disposition:** Ms. Woodward agreed to have her license suspended for three (3) years from the date of the Commission's Final Order and to accept a formal reprimand from the Commission.

## Lesha Hays (Berea) Case No. 02-0058

**Violation:** Ms. Hays stipulated to a violation of 201 KAR 11:250 (2) for failing to properly complete an offer to purchase contract.

**Disposition:** Ms. Hays agreed to accept a formal reprimand from the Commission and to attend six (6) hours of continuing education (in addition to any hours already required by law) within twelve (12) months of the Commission's final order. Ms. Hays also agreed to pay damages to the Complainants in the amount of one thousand dollars (\$1,000.00) within five (5) days of the date of the Commission's Final Order.

## Jennifer K. Blair (Jeffersonville)

Case No. 02-0123

**Violation:** Ms. Blair violated KRS 324.160(4)(j) because she pled guilty to a felony while holding a real estate license issued by the Commission. She also violated KRS 324.160(4)(k) for failing to report this conviction to the

Commission in a timely manner.

**Disposition:** Ms. Blair agreed to have her license placed on probation for a period of one (1) year. The Commission will review the case at the end of the one (1) year period. Ms. Blair also agreed to attend fifteen (15) hours of continuing education in addition to the hours already required by law. Six (6) of the hours will be in a financial management course. The remaining nine (9) will be in continuing education courses approved by the Commission. She has one (1) year to complete the courses. Ms. Blair also agreed that, if she should ever decide to apply for a broker's license in the future, she must first appear before the Commission for their approval or denial of such licensure.

## James H. Knifley

(Campbellsville) Case No. 00-0098

**Violation:** Mr. Knifley was found in violation of KRS 324.160(4)(u) for failing to properly complete an agency disclosure form.

**Disposition:** He shall attend six (6) hours of continuing education as it pertains to agency disclosure and the consumer bulletin. The six (6) hours are in addition to any already mandated continuing education.

## Jean W. Addleton (Lexington)

Case No. 96-0198

**Violation:** Ms. Addleton was found in violation of KRS 324.160 (1)(b) for making a substantial misrepresentation or failing to disclose known defects which substantially affected the value of the property.

**Disposition:** Ms. Addleton was ordered to pay restitution to the complainant in the amount of

Continued on Page 11

## Disciplinary Actions

Continued from Page 10

\$10,500.00 and to receive a formal reprimand from the Commission.

### **Deloise Adams** (Franklin)

Case No. 03-0015

**Violation:** Ms. Adams, acting as an instructor, violated KRS 324.046(1)(2) for failing to ensure that students fulfilled the required hours for a sales or broker's license and 201 KAR 11:170 Section (4) for failing to maintain accurate records and 201 KAR 11:170 Section (6)(2) for a deficiency in the value of the course offered.

**Disposition:** Ms. Adams agreed to have her school suspended for a period of ninety (90) days and have her real estate school certification placed on probation for a period of one (1) year and to conform to several stipulations.

### **Frank Karr** (Louisville)

Case No. 02-0111

**Violation:** Mr. Karr stipulated to a violation of 201 KAR 11:121, Section 1(4) for breaching a fiduciary duty involving a second sales contract.

**Disposition:** Mr. Karr agreed to have his license placed on probation for a period of one (1) year and to attend six (6) hours of continuing education in addition to any hours required by law. He and Mr. Craig D. Duerr also agreed to pay damages in the amount of \$400.00 to the complainant.

### **Craig D. Duerr** (Louisville)

Case No. 02-0111

**Violation:** Mr. Duerr stipulated to a violation of 201 KAR 11:121, Section 1(4) for breaching a fiduciary duty to a client.

**Disposition:** Mr. Duerr agreed to attend the six (6) hour Kentucky Core Course in addition to any hours required by law. He and Mr. Frank Karr also agreed to pay damages in the amount of \$400.00 to the complainant.

## When to Deposit Escrow Monies in Compliance with the Law

*By Lee B. Harris, General Counsel*

Under Kentucky law, KRS 324.111(1), a broker is required to deposit all money belonging to others into his or her escrow account without unreasonable delay. The phrase "without unreasonable delay" is a specifically-defined legal term that means "within three (3) business days of the creation of an executory contract for the sale or lease of real property." Please see 201 KAR 11:011, Section 1(6).

This definition is very important, because it triggers the timeframe for brokers to act within the law. For example, if the contract is created at 3:00 p.m. on Friday, the broker has until 3:00 p.m. on Wednesday to deposit the money into the escrow account.

However, this regulation also has an opposite effect. The upshot of this regulation is that an earnest money deposit should not be placed into the escrow account until after an executory contract has been created. This means that the deposit should not be made while negotiations are ongoing.

Although it may seem harmless to deposit money into the escrow account during the offer stage, it actually could be very detrimental to the parties. Once a deposit goes into the escrow account, KRS 324.111(4) comes into play. Then, the money cannot be given to either party without a mutual release signed by both parties, a court order or performance on the contract. If a contract is never created because the parties do not ever finalize their negotiations, you can imagine how upset the buyer will be if he or she cannot receive the deposit back immediately -- or at all!

For instance, if the negotiations have become tense, or, if there is a dispute as to whether or not a contract was actually created, it could take a legal battle for the buyer to receive his or her money. This could create serious liability problems for a broker who was not supposed to place that money on deposit in the first place.

The Commission has recently heard of three instances of a broker depositing the earnest money prior to the creation of a contract. In all three instances, there were major problems caused by this early deposit. We have even received complaints from the buyers involved in two of those transactions.

The way to avoid this problem is easy: make sure that a contract has been created and that there are no additional terms or conditions to be negotiated prior to depositing any monies into your escrow account. If permission to deposit immediately.





### *IN MEMORIAM*

*The Commission would like to extend its deepest sympathies to the families and friends of the following deceased licensees:*

*W. H. Sullivan  
Carlisle, KY*

*Tom Helson  
Edgewood, KY*

### *COMMISSION MEETINGS*

The Commission meets once a month, usually at the Commission offices in Louisville. For a complete list of 2003 Commission meeting dates, please refer to our website ([www.krec.net](http://www.krec.net)). The meetings are open to the public. If you would like to address the Commission about a certain topic, please contact Melissa Kime in order to be placed on the agenda. Only those placed on the agenda each month can be heard.

### **COME SEE US AT THE KENTUCKY STATE FAIR**

The Commission will again have a booth in the Government Section of the South Wing at the Fair. The Fair is August 14 - 24, 2003. We hope to see you there.

### **ERRORS & OMISSIONS INSURANCE**

If you have questions about your group errors and omissions insurance, please contact the carrier directly at:

Rice Insurance Services Company, LLC  
4211 Norbourne Blvd.  
Louisville, KY 40207  
Phone: 502-897-1876  
Fax: 502-897-7174

Kentucky Real Estate Commission  
10200 Linn Station Road, Suite 201  
Louisville, KY 40223  
Phone: (502) 425-4273 Fax: (502) 426-2717  
Toll Free: 1-888-373-3300  
Fax-On-Demand: 1-888-KREC-FAX  
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**The Kentucky Real  
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be closed on:**

**July 4, 2003  
(Independence Day)  
&  
September 1, 2003  
(Labor Day)**